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Drexler chit

~~Mr Dave, for filing~~
ID 0941

File - Note ANY WORK PRODUCT
CONFIDENTIAL 3.12.91
59

March 12, 1991

Reply to
Attn of: SO-125

Attorney Client Privilege
Attorney Work Product Privilege
Prepared in Anticipation of Litigation
Deliberative Process Privilege

MEMORANDUM

SUBJECT: Conclusion of U.S. v. Warren Bingham, et al., Civil No. 88-3011, U.S. District Court, District of Idaho

FROM: Richard G. McAllister *RM*
Assistant Regional Counsel

TO: Michael Gearheard, Chief
Waste Management Branch

At least one chapter in the long saga involving the AARCOM-Rathdrum facility in Idaho has come to an end. We recently received a copy of Warren Bingham's check for \$30,000 that settles the RCRA civil action against him as owner of the site. For your information/files, I attach a copy of the final Agreed Consent Judgment and Order, and a copy of the letter and check for the settlement payment. We are continuing to work with the U.S. Attorney's office in Seattle to collect the default judgment against Wally Drexler and Allan Pickett for around \$5,000. This presents an interesting irony as we just recently filed a CERCLA cost recovery case against these same parties for over \$2 million from emergency removal actions. At any rate, the RCRA case is closed!

cc: Monica Kirk

USEPA RCRA



3009310



U. S. Department of Justice

Washington, DC 20530

February 26, 1991

Mr. Rich McAllister
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: United States v. Warren Bingham Civil No. 88-3011
(U.S.D.C. Dist. of Idaho)

Dear Rich,

Enclosed please find a copy of the Warren Bingham
Consent Decree which was signed and entered by Judge Ryan on
February 4, 1991.

I am closing my file in this case. Thank you for your
assistance in the prosecution of this matter.

Very truly yours,


Angela F. O'Connell

RECEIVED
MAR 4 1991

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

File & close *Warren*
ANGELA O'CONNELL
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

MAURICE O. ELLSWORTH
United States Attorney

WARREN S. DERBRIDGE
Assistant United States Attorney
Room 328, Federal Building
550 West Fort Street
Boise, Idaho 83724
Telephone: (208) 334-1211

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

WARREN BINGHAM,

Defendant.

Civil No. 88-3011

AGREED CONSENT JUDGMENT AND ORDER

WHEREAS on April 27, 1983, EPA filed an Administrative Complaint and Compliance Order (Docket No. X-83-04-02-3008) against Defendant Warren Bingham (Bingham) and others, pursuant to Section 3008 of the Resource Conservation and Recovery Act 42 U.S.C. § 6928, ("RCRA"), alleging that Defendants violated

Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and various provisions of 40 C.F.R. Part 265, in relation to activities conducted at Defendant's Rathdrum facility.

("facility") and

WHEREAS on June 20, 1985, Defendant Bingham entered into an Agreed Order For The Payment of Civil Penalties (Agreed Order) with EPA to resolve the claims set forth in the Complaint and Compliance Order under the terms of which defendant Bingham agreed to pay a civil penalty of \$15,000 plus interest (to be suspended if Bingham submitted an approved closure plan by October 20, 1985, and implemented the plan), and

WHEREAS Defendant Bingham did not pay the agreed civil penalty or interest and did not submit an approved closure plan as agreed, and

WHEREAS, on February 5, 1988 the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in the United States District Court for the District of Idaho alleging that Warren Bingham ("Defendant") improperly refused to comply with the above described Agreed Order and seeking penalties of not more than \$25,000 for each day of violation of the Agreed Order, and

WHEREAS Bingham desires to make a cash payment to settle its liability to the United States for violation of the Agreed Order and the RCRA violations specifically described therein, and

WHEREAS Bingham has stipulated and agreed to the making and entry of this Agreed Consent Judgment and Order without any admission of liability or fault as to any allegation or matter arising out of the pleadings of any party, and

WHEREAS, the EPA and Bingham have stipulated and agreed to the making and entry of this Agreed Consent Judgment and Order without any admission of liability or fault as to any allegation or matter arising out of the pleadings of any party, and subject to Bingham making the payment required under paragraph 1 of this Consent Order, that no allegation or admission contained herein or contained in the documents submitted in connection with the administrative proceedings under Administrative Docket Nos. X-83-04-01-3008 and X-83-04-02-3008 will be considered an admission or used by EPA as such against Bingham in any other proceeding: and

WHEREAS the United States and the Defendant agree that settlement of this case without further litigation is the most appropriate means of resolving this action, and

WHEREAS the undersigned representatives of each party hereby consent to the entry of this Order:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Defendant shall pay to the "U.S. Treasury" the sum of Thirty Thousand Dollars (\$30,000), within thirty (30) days of entry of this Agreed Consent Judgment and Order.

2. The payment referred to above shall be made payable to the U.S. Treasury and sent to the United States Attorney for the District of Idaho. The check shall reference the name and civil action number of this case and a copy of the check shall be submitted to the following persons:

Angela F. O'Connell
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Washington, D.C. 20044

and to the Regional E.P.A. Attorney at the following address:

Monica Kirk
Associate Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue (S)-125)
Seattle, WA 98101
(206) 442-1505

3. In the event that Bingham fails to pay the amount specified in paragraph 1 above, within thirty (30) days of entry of this Agreed Consent Judgment and Order, interest shall accrue on any unpaid balance as prescribed in 28 U.S.C. 1961(a).

4. The United States shall execute on this judgment only if the payment described in Paragraph 1 is not made within 30 days of entry of this Agreed Consent Judgment and Order.


5. Subject to Bingham making the required payment to the United States pursuant to the terms of this Agreed Consent Judgment and Order, the United States shall not use any allegations or admissions contained herein or submitted in connection with the administrative proceedings under

Administrative Docket Nos. X-83-04-01-3008 and X-83-04-02-3008 as an admission against Bingham in any other proceeding.

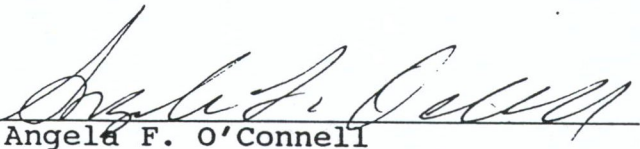
6. This Order, and actions taken to satisfy this Order, or any conditions therein shall operate to relieve Mr. Bingham from liability for the RCRA violations alleged in the April 27, 1983 Administrative Complaint and Compliance Order (Docket No. X-83-04-02-3009) and the charges alleged in the aforementioned February 5, 1988 Complaint filed by the United States in this action. This Order shall not operate to relieve Mr. Bingham from further liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

7. Each party shall bear its own costs, disbursements, and attorney fees associated with this litigation.

FOR THE UNITED STATES:


RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources Division

Date: 1-25-91


Angela F. O'Connell
Trial Attorney
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 514-5315

Date: 1/25/91

Maurice Ellsworth
United States Attorney
District of Idaho

WARREN DERBRIDGE
Assistant United States Attorney
District of Idaho

date

Dana A. Rasmussen
DANA A. RASMUSSEN
Regional Administrator, Region 10
U.S. Environmental Protection Agency

12/6/90
date

Richard G. McAllister
RICHARD G. MCALLISTER
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, SO-125
Seattle, Washington 98101

11/19/90
date

Elizabeth M. (Betty) Galar
BETTY OJALA
Office of Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

December 19, 1990
date

James Strock

James Strock
Assistant Administrator
Office of Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: 1/23/91

FOR THE DEFENDANT:
WARREN BINGHAM

C. Ben Martin

C. Ben Martin, Esquire
P.O. Box 2898
Boise, ID 83701-2898

Date: Nov. 6, 1990

Warren Bingham
Warren Bingham

Date: November 2, 1990

HAROLD L. RYAN

UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED: 2-4-91

LAWYER

**C. BEN
MARTIN**

(208) 343-6485 • FAX (208) 343-9819 • 476 N. 12TH, SUITE 100 • P.O. BOX 2898 • BOISE IDAHO 83701

*copy to McAllister,
Marking, letter by
ma 3/6/91
Rich - include in
OE report, pls.*

February 26, 1991

Monica Kirk
Associate Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue (S)-125)
Seattle, WA 98101

Re: US v. Bingham
Idaho, #88-3011

Dear Monica:

Pursuant to Paragraph 2 on Page 4 of the "Agreed Consent Judgment and Order" in the above case, you will find enclosed photocopy of both sides of the settlement check which was this date delivered to the USDA's office in Boise, and the photocopy shows the original signature of receipt by Warren Derbridge, Assistant U.S. Attorney.

Very truly yours,

Dictated by Mr. Martin and
mailed without signature in his
absence to avoid delay.

C. Ben Martin

CBM:mc
Enc.

cc: Warren Bingham

RECEIVED
MAR 4 1991

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

MGH

MFS GOVERNMENT SECURITIES
HIGH YIELD TRUST

WARREN W BINGHAM & LANITA E
BINGHAM TRS U/A DTD 9/8/86
BINGHAM FAMILY TRUST

9024

4280 Patterson Dr.
Dia. Sprgs., Ca. 2-20 19 91

#11 95619

52
110

PAY
TO THE
ORDER OF

*****U.S. TREASURY***** \$30,000.00*****

THIRTY THOUSAND AND NO/100
DOLLARS



State Street

State Street Bank and Trust Company
Boston, Massachusetts 02101

NOT VALID FOR LESS THAN \$500.00

Warren W. Bingham

Lanita E. Bingham

IF JOINT ACCOUNT ALL OWNERS MUST SIGN

(b) (6)

INTERCHECKS • NORPAX

PLEASE ENDORSE HERE

U.S. DISTRICT COURT - IDAHO
UNITED STATES OF AMERICA
WARREN BINGHAM
CIVIL NO. 88-3011

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

FEDERAL RESERVE NOTE - FEDERAL RESERVE NOTE

2/26/91

RECEIVED THE ORIGINAL OF THE FOREGOING CHECK.

(Title)

Sharon D. LaHage
Assistant U.S. Attorney